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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~465.~~ ~~230~~ 479

GEORGE CHORPENNING, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 28, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 465.

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1 *Petition.*

United States Court of Claims.

GEORGE CHORPENNING
vs.
THE UNITED STATES.

To the honorable Court of Claims:

The petition of George Chorpenning, a citizen of the United States, resident in the State of Pennsylvania, sheweth:

That your petitioner and one Absalom Woodward, (since deceased,) entered into a contract with the United States for transporting the mail on route No. 5,066, from Sacramento city, in the State of California, to the city of Salt Lake, in the Territory of Utah, and back, once a month, from the 10th of May, 1851, to the 30th of June, 1854, for the compensation of $14,000 00 per annum, a copy of which contract is hereto annexed and marked "Exhibit A."

On the expiration of the above term, your petitioner entered into another contract with the United States, to carry the mail on route No. 12,801, from Salt Lake City, in the Territory of Utah, to San Diego, California, and back, once a month, from July 1, 1854, to June 30, 1858, for the compensation of $12,500 00 per annum. The Pacific end of the route was soon after changed to San Pedro, Cal.; the towns of San Diego and San Pedro being within a few miles of each other on the Pacific coast. A copy of this contract is hereto annexed and marked "Exhibit B."

At the time the first of these contracts was made, the country through which lay the direct route between Sacramento and
2 Salt Lake was unexplored and almost entirely unknown. There were no roads or stations of any kind, and the only population were roving bands of Indians, who were at times at deadly enmity with the whites. These frequently attacked the mail trains and often murdered those having them in charge. In this way the partner of your petitioner, Mr. Woodward, lost his life in the month of November, 1851. For a more particular account of the dangers and difficulties attending this service, he refers to a copy of his original petition presented to the House of Representatives, which is hereto annexed and marked "Exhibit K."

When the first contract was taken, there was a large emigration moving across the country from which the contractors derived considerable profit, and also secured them some protection from the Indians. But in the year 1854, there was a general uprising among the Indians, which entirely cut off all emigration to the Pacific and rendered the conveying of the mails almost impracticable. In addition to this, the roads over the mountains became impassable in the winter months, and your petitioner, by the direction of the Post Office Department, while this occurred, carried the mail down the Pacific coast to San Pedro, and from there to Salt Lake by the south-

ern route, an increased distance of five hundred miles. The service was performed over this route for several months.

While your petitioner was endeavoring to carry the mail over the direct route from Sacramento to Salt Lake he established a depot at Carson's valley, which became the nucleus of a settlement, and in the year 1852 a post office was established there, so that when the mail was carried by way of San Pedro it required a separate train to supply Carson's from Sacramento, a distance of 180 miles. This service your petitioner also performed for several months.

The contracts with your petitioner only contemplated the transmission of the comparatively light mails between Salt Lake and the settlements on the Pacific coast. There was existing at the same time a mail route between Salt Lake and the Atlantic States via Independence, Missouri. The contractors on this route having failed, the heavy mails which should have been carried that way were taken across the isthmus, and up to Sacramento, and there loaded upon your petitioner, to be carried over his route; and the return mails were sent the same way. This service he also performed for several months.

3 While your petitioner was struggling under a series of disasters, which would have discouraged almost any one, and at the same time performing the service with a fidelity which astonished those who were the best acquainted with the circumstances, the Postmaster General, acting under a misapprehension of the facts, annulled his contract, and gave the route to another party at $50,000 per annum, which furnishes the best evidence of the actual value of the services rendered.

Your petitioner being thus left, with all his trains and other property, in the wilderness, where they were comparatively valueless, was compelled to visit Washington, where, upon a proper presentation of the case, he was reinstated in his contract.

Your petitioner afterwards preferred his claims to Congress, and asked from that body—

1st. An increase of compensation under the two contracts.

2d. An allowance under the first contract for the increased distance in conveying the mail between Sacramento and Salt Lake via San Pedro.

3d. An allowance for carrying the mail between Sacramento and Carson's, while the Salt Lake mail was carried via San Pedro, under the first contract.

4th. An allowance for carrying the eastern or Independence mail, under the first contract, between Sacramento and Salt Lake, and sometimes via San Pedo; and under the second contract between Salt Lake and San Pedro, or San Diego.

5th. Damages for the annulment of the first contract by the Postmaster General.

The petition presented has already been referred to, and is hereto annexed and marked "Exhibit K."

This application was favorably received by Congress, and an act

was passed for the relief of your petitioner, which was approved on the 3d day of March, 1857, and is as follows:

Stat. at Large, vol. 11, p. 521.

CHAP. CLXXVI.

"An act for the relief of George Chorpenning, jr.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Postmaster General be and he hereby is, required to adjust and settle the claim of said Chorpenning, as surviving partner of Woodward and Chorpenning, and in his own right, for carrying the mails by San Pedro, and
4 for supplying the post office in Carson's valley, and also for carrying part of the Independence mail by California, allowing a pro rata increase of compensation for the distance by San Pedro, for the service to Carson's valley, and for such part of the eastern mail as was was carried by California during all the time when said services were performed, as shown by the affidavits and proofs on file in the House of Representatives.

"SEC. 2. *And be it further enacted*, That the Postmaster General be, and he is hereby, required to adjust and settle the claim of said Chorpenning, as surviving partner of Woodward and Chorpenning, for damages on account of the annulment or suspension of Woodward and Chorpenning's contract for carrying the United States mail from Sacramento, in California, to Salt Lake, in Utah Territory, as shown in the affidavits and proofs on file in the House of Representatives.

"SEC. (3) 4. *And be it further enacted*, That the Postmaster General be required to allow and pay to said Chorpenning his full contract pay, during the suspension of Woodward and Chorpenning's contract, from the fifteenth day of March, eighteen hundred and fifty-three, to the first of July of the same year; and also, to allow and pay to said Chorpenning, thirty thousand dollars per annum, from the first day of July, eighteen hundred and fifty-three, when he resumed service under the contract of Woodward and Chorpenning, down to the termination of his present contract, which said sum of thirty thousand dollars per annum shall be in lieu of the contract pay under both contracts. And the sums in this act authorized to be allowed shall be paid out of the treasury.

"Approved March 3, 1857."

Under this act the Postmaster General proceeded to adjust the accounts of your petitioner, but he avers that he has not had such allowances as he is entitled to under its provisions.

The sum of $30,000 per annum, in lieu of the original contract price named in the two contracts, has been paid to your petitioner for the regular service performed, and about this there is no controversy. There was allowed him also by the Postmaster General $30,000 as damages for the annulment of his contract. This sum he considered at the time, and still considers, much less than he was

c

entitled to under that item, but waives any further claim; and about this there is no controversy.

The whole claim of your petitioner is based upon the mistakes and unjust allowances of the Postmaster General for the increased distance, via San Pedro, for supplying the post office at Carson's, and for carrying the eastern mail.

On the 25th day of May, 1857, the Postmaster General, under the said act, made your petitioner allowances as follows:

5	For supplying Carson's valley from Sacramento	$692
	For increased distance, via San Pedro	6,410
	For carrying the eastern or Independence mail	37,375
	And	5,005
		$49,482

Your petitioner thereupon requested a particular statement as to the said allowances, and received from the Post Office Department the following reply:

"POST OFFICE DEPARTMENT,
"*Contract Office, May 27th*, 1857.

"SIR: I enclose for your information a statement of the calculations by which the allowance in your favor, ordered a day or two since by the Postmaster General, was estimated.

"Respectfully, your ob't serv't,
"WM. H. DUNDAS, *2d Ass. P. M. Gen.*

"To Mr. GEORGE CHORPENNING, Jr.,
"*Washington City.*

"The monthly pay on route 5,066, (old,) having been $1,16666, and distance having been 910 miles, pro rata additional for the 180 miles, to supply Carson's valley from Sacramento city, first 3 months of 1853, was $692

"Also the pro rata increase of pay on same contract, ($14,000 per annum,) for 500 miles increase to run via San Pedro, in March, 1852; January, February, March, November, and in December, 1853; and in January, February, March, and April, 1854 ..... $6,410

"The proofs from House of Representatives show that Independence matter was carried in one direction, say from Salt Lake to San Diego, one month in 1855, four months in 1853, and three months in 1854; also, on return, say San Diego to Salt Lake, two months in 1855, and seven months in 1856. (On two of the trips in 1856, February and March, such matter having been carried in both directions.)

"These proofs further show that the average weight of the regular mail belonging to the road was from 75 to
6 150 pounds in each direction. The department, therefore, in its calculations, deemed it fair to assume 250 pounds (double of 125) as the average weight of the regular mail per trip.

"And the proofs having shown that the average weight of the Independence matter carried in the months above specified, prior to February, 1856, was about 750 pounds, the calculations of the department trebled the monthly pay fixed by the contracts, (viz., $1,166 66 prior to 1st July, 1854, and $1,041 66 after that date,) in fixing the extra pay for the Independence matter, which gave $3,500 for 1852, $14,000 for 1853, $10,500 for 1854, $6,250 for 1855, and $3,125 for January, 1856. (Total) $37,375

"The proofs furnished state the respective weights of the mails carried in February, March, April, May, July, and August, 1856, as amounting, on an average, to about 512 pounds of regular matter, and 410 pounds of Independence mail, the extra pay for which, on the basis of the $12,500 contract, appeared to be, for said six months $5,005

"The damages fixed by the proofs as resulting from the annulment of the Woodward and Chorpenning contract, are $30,000

"It will be seen that these several allowances foot up at $79,482."

Your petitioner says that these calculations are erroneous and unjust in several particulars, some mistakes being in his favor, but the balance being largely against him. He insists that a just construction of the statue requires the allowance of a pro rata compensation, on the basis of $30,000 per annum, after July 1, 1853, which is the compensation allowed by the act in lieu of the contract pay under both contracts. That it is an error to allow him the pro rata pay for a full month when the extra or eastern mail was carried only one way. And that if the eastern mail weighed 750 pounds, and the regular mail from 75 to 150 pounds, or an average of 112½ pounds, the proportion is—

$$750 : 112\tfrac{1}{2} :: 6\tfrac{2}{3} : 1, \text{ and not three to one.}$$

This mistake is nearly counteracted by the opposite one of allowing a full month's pay for half a month's service, but it acts against the petitioner for those months in which the extra mail was carried both ways, and the opposite mistake is in his favor on the fourth item of $5,005, after the proportion in the weight of the mails had changed.

7

Your petitioner submits the following as a correct statement of the amounts justly due him for the extra services found by the Postmaster General to have been performed in said order of May, 1857.

Before July 1, 1853, contract price was per annum ...	$14,000
Divided by 12, gives contract price per month	$1,166 96
The distance to Salt Lake and return, being the round trip required per month, is 1,820 miles, which, being divided, gives price per month, per mile ..	$00.641
After July 1, 1853, price was per annum	$30,000 00
Divided by 12, gives price per month	2,500 00
Distance to Salt Lake and return, 1,820 miles, gives price per month, per mile	$01.3735

entitled to under that item, but waives any further claim; and about this there is no controversy.

The whole claim of your petitioner is based upon the mistakes and unjust allowances of the Postmaster General for the increased distance, via San Pedro, for supplying the post office at Carson's, and for carrying the eastern mail.

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	For carrying the eastern or Independence mail	37,375
	And	5,005
		$49,482

Your petitioner thereupon requested a particular statement as to the said allowances, and received from the Post Office Department the following reply:

"POST OFFICE DEPARTMENT,
"*Contract Office, May 27th*, 1857.

"SIR: I enclose for your information a statement of the calculations by which the allowance in your favor, ordered a day or two since by the Postmaster General, was estimated.

"Respectfully, your ob't serv't,
"WM. H. DUNDAS, *2d Ass. P. M. Gen.*

"To Mr. GEORGE CHORPENNING, Jr.,
"*Washington City.*

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"Also the pro rata increase of pay on same contract, ($14,000 per annum,) for 500 miles increase to run via San Pedro, in March, 1852; January, February, March, November, and in December, 1853; and in January, February, March, and April, 1854 ..... $6,410

"The proofs from House of Representatives show that Independence matter was carried in one direction, say from Salt Lake to San Diego, one month in 1855, four months in 1853, and three months in 1854; also, on return, say San Diego to Salt Lake, two months in 1855, and seven months in 1856. (On two of the trips in 1856, February and March, such matter having been carried in both directions.)

"These proofs further show that the average weight of the regular mail belonging to the road was from 75 to
6 150 pounds in each direction. The department, therefore, in its calculations, deemed it fair to assume 250 pounds (double of 125) as the average weight of the regular mail per trip.

"And the proofs having shown that the average weight of the Independence matter carried in the months above specified, prior to February, 1856, was about 750 pounds, the calculations of the department trebled the monthly pay fixed by the contracts, (viz., $1,166 66 prior to 1st July, 1854, and $1,041 66 after that date,) in fixing the extra pay for the Independence matter, which gave $3,500 for 1852, $14,000 for 1853, $10,500 for 1854, $6,250 for 1855, and $3,125 for January, 1856. (Total)..... $37,375

"The proofs furnished state the respective weights of the mails carried in February, March, April, May, July, and August, 1856, as amounting, on an average, to about 512 pounds of regular matter, and 410 pounds of Independence mail, the extra pay for which, on the basis of the $12,500 contract, appeared to be, for said six months.. $5,005

"The damages fixed by the proofs as resulting from the annulment of the Woodward and Chorpenning contract, are..... $30,000

"It will be seen that these several allowances foot up at $79,482."

Your petitioner says that these calculations are erroneous and unjust in several particulars, some mistakes being in his favor, but the balance being largely against him. He insists that a just construction of the statue requires the allowance of a pro rata compensation, on the basis of $30,000 per annum, after July 1, 1853, which is the compensation allowed by the act in lieu of the contract pay under both contracts. That it is an error to allow him the pro rata pay for a full month when the extra or eastern mail was carried only one way. And that if the eastern mail weighed 750 pounds, and the regular mail from 75 to 150 pounds, or an average of 112½ pounds, the proportion is—

$$750 : 112\tfrac{1}{2} :: 6\tfrac{2}{3} : 1, \text{ and not three to one.}$$

This mistake is nearly counteracted by the opposite one of allowing a full month's pay for half a month's service, but it acts
7 against the petitioner for those months in which the extra mail was carried both ways, and the opposite mistake is in his favor on the fourth item of $5,005, after the proportion in the weight of the mails had changed.

Your petitioner submits the following as a correct statement of the amounts justly due him for the extra services found by the Postmaster General to have been performed in said order of May, 1857.

Before July 1, 1853, contract price was per annum...	$14,000
Divided by 12, gives contract price per month....	$1,166 96
The distance to Salt Lake and return, being the round trip required per month, is 1,820 miles, which, being divided, gives price per month, per mile..	$00.641
After July 1, 1853, price was per annum.....	$30,000 00
Divided by 12, gives price per month.....	2,500 00
Distance to Salt Lake and return, 1,820 miles, gives price per month, per mile.....	$01.3735

Supply of Carson's valley for January, February, and March, 1853, distance from Sacramento 180 miles, at $14,000 per annum, rate per mile, per month, $00.641 × 360 miles × 3 months.....		$692 28	
Amount allowed by the P. M. General.....			$692 00
Increased distance via San Pedro, pro rata increase of pay for 500 miles increased distance, in March, 1852, January, February, and March, 1853, at $14,000 per annum, rate per mile, per month, $00.641 × 1000 miles × 4 months.	$2,564 00		
Do. for November and December, 1853, January, February, March, and April, 1854, being subsequent to July 1, 1853, is at $30,000 per annum, rate per mile, per month, $01.3735 × 1000 miles × 6 months.....	$8,241 00	$10,805	
Amount allowed by the Postmaster General.....			$6,410
8 Carrying eastern mail: Postmaster General assumes that mail was carried in one direction one month in 1852, (i. e. December, 1852,) 4 months in 1853, (proof shows these were January, February, March, and December, 1853,) 3 months in 1854, (these were January, February, and March, 1854,) 2 months in 1855, (these were July and December, 1855.) 7 months in 1856, (these were January, February, March, April, May, July, and August, 1856,) and in February and March, 1856, mail was carried both ways.			
1st. Four half months prior to July 1, 1853, viz., December, 1852, January, February, March, 1853, $14.000 per annum, rate per month $1,166.66 × 2 months —$2,333.33 × ncreased weight 6.66.....	$15,540		to
Which gives $3,885 for each half month.			ct

2d. Seven half months prior to February 1, 1856, viz., December, 1853, January, February, and March, 1854, July and December, 1855, and January, 1856, $30,000 per annum, rate per month $2,500 × months 3.5= $8,750 × increased weight $6.66.	$58,275		
Giving $8,325 for each half month.		$73,815	
Amount allowed by the Postmaster General			$37,375
3d. Four half months and two full months after February, 1856, viz., February and March, full months; April, May, July, and August, 1856, half months, at $30,000 per annum, rate per month, $2,500 × 4 months= $10,000.			
9 Ratio of 512 pounds regular mail to 412 pounds extra mail, is .8 which multiplied gives 10,000. ×.8		$8,000	
Which gives for each full month $2,000, andeach half month $1,000.			
Amount allowed by the Postmaster General			$5,005
Aggregate amount due for these services		$93,312 28	
Aggregate allowed by the Postmaster General			$49,482
Difference in favor of claimant		$43,830 28	

It will be observed that the foregoing estimates for carrying the eastern mail cover a portion of the time, eight months, viz., December, 1852, January, February, March, and December, 1853, January, February, and March, 1854, while the first contract was in force, fixing the route between Sacramento and Salt Lake; and it is assumed that these extra mails were carried over the usual route, while in fact they were carried via San Pedro, an increased distance of five hundred miles for each half trip.

It was also shown by the evidence that the post office at Carson's had been supplied for two months, not included in the former allowance, and that after the second contract came in force, fixing the route between Salt Lake and San Pedro, the extra mails equalled in amount the regular mails carried, for the whole time between July 1, 1854, and October 1, 1856.

The Postmaster General subsequently re-examined the case, and made the following order and allowances, based upon the foregoing facts:

"30th October, 1857. California.

5,066.—(Old.)

Sacramento City to Salt Lake,

Woodward & Chorpenning.

12,801.

Salt Lake to San Pedro,

George Chorpenning, jr.

"On further examination of the case, it is hereby ordered to allow, in addition to the allowance by order of the 25th of May, 1857, the sums following, to wit:

"For additional supply of Carson's valley, one trip in December, 1853, and a half trip in April, and a half trip in August, 1854, equal to two months		$461 33
"For conveyance of Independence mails between Sacramento and San Pedro during the months of December, 1852, January, February, March, and December, 1853, and January, February, and March, 1854, eight months		$15,384 62
"Special report; November 4, 1857.		
"For conveyance of Independence mails under new contract, between San Pedro and Salt Lake, from 1st of July, 1854, to 1st October, 1856	$28,125	
"Less the sum of allowed by said order of 25th of May.	$14,380	$13,745 00
"In the aggregate		$29,590 95

"And to refer to auditor to pay George Chorpenning, jr.

(Signed) "AARON V. BROWN."

And your petitioner saith that the calculations made in the foregoing order are erroneous in many respects; that under a just construction of the law upon the facts determined by the Postmaster General, and established by the proof, the following calculation would show the amount to which he is justly entitled for said services:

1st. Supply of Carson's valley, one trip in December, 1853, half trip in April, and half trip in August, 1854, equal to two round trips, all after July 1, 1853, and therefore at the rate of

11 $30,000 per annum, distance 180 miles, rate per month per mile, 1.3735×360 miles×2 months.... .... $988 92

Amount allowed by Postmaster General..... ..... $461 33

2d. Carrying eastern mails between Sacramento and San Pedro, under first contract, December, 1852, January, February, March, and December, 1853, and January, February, and March, 1854, eight months, half trip only, distance 500 miles.

For December, 1852, January, February, and March, 1853, being prior to July 1, 1853, and under contract, are to be taken at $14,000 per annum, rate per month, per mile, $00.641×500 miles×4 mos.=$1,282 for differences in weight of mails, 1,282×6.66 gives..... .....$8,528 12

Months of December, 1853, January, February, and March, 1854, 4 months, after July 1, 1853, therefore at $30,000 per annum, half trips only, distance 500 miles, rate per month per mile 1.3735 ×500 miles×4 months=2,747 for differences in weight of mails, 2747×6.66 gives..... .....$18,295 00 $26,823 12

Amount allowed by Postmaster General..... $15,384 62

3d. For conveyance of eastern mails, under second contract, between San Pedro and Salt Lake, from July 1, 1854, to Oct. 1, 1856, 27 months, at $30,000 per annum.....$67,500

From this sum should be deducted the amounts before computed for carrying eastern mails between San Pedro and Salt Lake, from July 1, 1854, to October 1, 1856, (see pages 8 and 9,) viz., July and December, 1855, and January, 1856, 3 half trips, at $8,325 per half month, $24,975 10.

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February and March, 1856, 2 full trips, at $2,000 each, $4,000.		
April, May, July, and August, 1856, half trips, at $1,000 each, $4,000	$32,975	
Showing balance of	$34,525 00	
Amount allowed by Postmaster General		$13,745 00
Total due under the order of November, 1857	$62,237 04	
Total allowed by Postmaster General		$29,590 95
Deficit		$32,746 09
Add deficit under order of May, 1857		$43,830 28
Shows total amount due the petitioner		$76,576 37

And your petitioner further avers that the affidavits and proofs, on file in the House of Representatives, show that he performed other extra services not included in either of the said statements. That for said services not so included, your petitioner is entitled uncer the said act to the further compensation of one hundred thousand dollars.

That said exhibits hereto annexed and marked C, D, E, F, G, H, and I, show all the affidavits and proofs on file in the House of Representatives when said act was adopted, and are therein referred to; which exhibits he prays may be taken as a part of this petition.

Your petitioner avers that the proofs on file in the House of Representatives, and afterwards submitted to the Postmaster
13 General, establish and prove that he did perform all the services which are enumerated in the two orders of May and November, 1857, which proofs are hereto annexed and marked Exhibits C, D, E, F, G, H, and I, inclusive. That he is entitled to be compensated for such services according to the measure of compensation named in the act; that he has repeatedly urged upon the Postmaster General the justice of his demand for a settlement of his accounts upon the principles named in the said statute; but that the Postmaster General has refused to make him any other or further allowances than those set forth in the two orders of May and November, 1857. And your petioner claims that there is justly due him from the United States the said sum of $176,576 37. That your petitioner has at all times borne true allegiance to the government of the United States, and has not, in any way, voluntarily aided, abetted, or given encouragement to rebellion against the said government.

GEO. CHORPENNING.

HUGHES, DENVER & PECK,
Solicitors for Claimant.

George Chorpening, being duly sworn, deposeth and saith, that he is the claimant in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or interest therein, has been made; that he is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts stated in said petition are true.

GEO. CHORPENNING.

Subscribed and sworn to before me on the 2d day of March, 1866, at the city of Washington, D. C.

JAMES H. CAUSTEN,
Notary Public.

Exhibit "A."

14 No. 5,066.—$14,000 per annum.

This article of contract, made the eleventh day of April, in the year one thousand eight hundred and fifty-one, between the United States and Absalom Woodward, George Chorpenning, Geerge W. Wright, Samuel S. Clymer, John R. Johnson, and A. D. Rightmire,

Witnesseth, that whereas Absalom Woodward and George Chorpenning, of the city of Sacramento and State of California, have been accepted, according to law, as contractors for transporting the mail on route No. 5,066, from Sacramento city, in the State aforesaid, to the city of Salt Lake, in the Territory of Utah, and back once a month, with "certainty, celerity, and security," at fourteen thousand dollars per year, for and during the term commencing the tenth day of May, in the year one thousand eight hundred and fifty-one, and ending with the thirtieth day of June, in the year one thousand eight hundred and fifty-four.

Now, therefore, the said Absalom Woodward and George Chorpenning, contractors, and George C. Wright, Samuel S. Clymer, John R. Johnson, and A. D. Rightmire, their sureties, do jointly and severally undertake, covenant, and agree with the United States, and do bind themselves:

1st. To carry said mail within the times fixed in the annexed schedule of departures and arrivals, except that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to what is given in the schedule; and so carry until said schedule is altered by the authority of the Postmaster General of the United States, as hereinafter provided, and then to carry according to said altered schedule. 2d. To carry said mail in a safe and secure manner, free from wet or other injury, under a sufficient oil-cloth or bear-skin. 3d. To take the mail and every part of it from, and deliver it and every part of

15 at, each post office on the route, or that may hereafter be established on the route, and into the post office at each end of the route, and into the post office at the place at which the carrier stops at night, if one is there kept; and if no office is there kept, to lock it up in some secure place at the risk of the contractors.

They also undertake, convenant, and agree with the United States, and do bind themselves, jointly and severally, as aforesaid, to be answerable for the person to whom the said contractors shall commit the care and transportation of the mail, and accountable to the United States for any damages which may be sustained by the United States through his unfaithfulness or want of care; and that the said contractors will discharge any carrier of said mail whenever required to do so by the Postmaster General; also, that they will not transmit by themselves or their agent, or be concerned in transmitting, commercial intelligence more rapidly than by mail, and that they will not carry out of the mail letters or newspapers which should go by post.

They further undertake, covenant, and agree with the United States, that the said contractors will collect quarterly, if required by the Postmaster General, of postmasters on said route, the balances due from them to the general post office, and faithfully render an account thereof to the Postmaster General in the settlement of quarterly accounts, and will pay over to the general post office all balances remaining in their hands.

For which services, when performed, the said Absalom Woodward and George Chorpenning, contractors, are to be paid by the said United States the sum of fourteen thousand dollars a year, to wit, quarterly, in the months of May, August, November, and February, through the postmasters on the route, or otherwise, at the option of tho Postmaster General of the United States; said pay to be subject, however, to be reduced or discontinued by the Postmaster General, as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed, by the said contractors and their sureties, that the Postmaster General may alter the contract, and alter the schedule, he allowing a pro rata increase of compensation within the restrictions imposed by law for the additional service required, or for the increased speed, if the employment of additional stock or carriers is rendered necessary; but the contractors may, in case of increased expedition, relinquish the contract, on timely
16 notice, if he prefer it to the change; also, that the Postmaster General may discontinue or curtail the service, he allowing one month's extra pay on the amount dispensed with, in order to place on the route a greater degree of service, (first offering it to the contractors at the price at which it can be obtained,) or whenever the public interests require such discontinuance or curtailment for any other cause.

It is hereby also stipulated and agreed, by the said contractors and [and] their sureties, that in all cases there is to be a forfeiture of the pay of a trip when the trip is not run; a forfeiture of at least one-fourth part of it when the running is so far behind time as to lose connection with a depending mail; and that these forfeitures may be increased into penalties of higher amount, according to the nature or frequency of the failure, and the importance of the mail; also, that fines may be imposed upon the contractors unless the delinquency be

satisfactorily explained to the Postmaster General in due time, for failing to take from or deliver at a post office the mail, or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carying it in a place or manner that exposes it to depredation, loss, or injury, by being wet or otherwise; or for not arriving at the time set in the schedule. And for setting up or running an express to transmit letters or commercial intelligence in advance of the mail, a penalty may be exacted of the contractors equal to a quarter's pay; but in all other cases no fine shall exceed three times the price of the trip.

And it is hereby further stipulated and agreed, by the said contractors and their sureties, that the Postmaster General may annul the contract for repeated failures; for violating the post office laws; for disobeying the instructions of the department; for refusing to discharge a carrier when required by the department; for assigning the contract without the consent of the Postmaster General; for setting up or running an express as aforesaid; or whenever the contractors, or either of them, shall become a postmaster, assistant postmaster, or member of Congress; and this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress passed on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

In witness whereof, the said contractors and their sureties
17 have hereunto set their hands and seals, the day and year set opposite their names respectively.

April 25, 1851.	A. WOODWARD.	[SEAL.]
April 25, 1851.	G. CHORPENNING.	[SEAL.]
April 25, 1851.	GEORGE G. WRIGHT.	[SEAL.]
April 25, 1851.	S. S. CLYMER.	[SEAL.]
April 25, 1851.	J. R. JOHNSTON, JR.	[SEAL.]
April 25, 1851.	A. G. RIGHTMIRE.	[SEAL.]

Signed, sealed, and delivered in the presence of—
R. H. WOODWARD.
HENRY A. BENJAMIN.

I hereby certify that George G. Wright and S. S. Clymer, J. R. Johnston and A. D. Rightmire are good and sufficient sureties, for the amount in the foregoing contract a .d bond.

RICHARD A. EDES,
Postmaster.

The schedule of departures and arrivals.

Leave Sarcamento city at 6 a. m., on the 1st of each month.

Arrive at the city of Salt Lake by 6 p. m., on the 30th of same month.

Leave the city of Salt Lake at 6 a. m., on the 1st of each month.

Arrive at Sacramento city by 6 p. m., on the 30th of same mouth.

It is hereby further understood, stipulated, and agreed by the contractors and their sureties, that the Postmaster General shall have

the power, and he doth hereby resume the right to put an end to and terminate this contract for mail service, at the end of one year from the commencement of service, or on the 31st of June, 1852, if he shall elect so to do. In the event of such discontinuance of service under the contract, then such additional allowance beyond the contract price, herein before stipulated and agreed to be paid, shall be made from the mail service over said route during said first year, as to him, the said Postmaster General, shall seem just, proper, and equitable.

May 1st, 1851.	A. WOODWARD.	[SEAL.]
May 1st, 1851.	G. C. CHORPENNING, JR.	[SEAL.]
18 May 1st, 1851.	GEORGE G. WRIGHT.	[SEAL.]
May 1st, 1851.	S. S. CLYMER.	[SEAL.]
May 1st, 1851.	J. R. JOHNSTON, JR.	[SEAL.]
May 1st, 1851.	A. D. RIGHTMIRE.	[SEAL.]

Attest:
D. MURRAY.

Exhibit "B."

No. 12,801.—$12,500 per annum.

This article of contract, made the twenty-second day of April, in the year one thousand eight hundred and fifty-four, between the United States (acting in this behalf by their Postmaster General) and George Chorpenning, jr., and John C. Kingsley, George W. Crum, and James W. Smith.

Witnesseth, that whereas George Chorpenning, jr., has been accepted, according to law, as contractor for transporting the mail on route No. 12,801, from Salt Lake city, (Utah,) by American Fork, Provo City, Springville, Payson, Summit Creek, Nephi City, Fillmore City, Red Creek, Parovan, Johnson's Springs, Cold Creek, Santa Clara, (Cal.,) and San Barnardino, to San Diego and back, once a month, with "certainty, celerity, and security," using therefor such means as may be necessary to transport the whole of raid mail, whatever may be its size or weight, at twelve thousand five hundred dollars per year, for and during the term commencing the first day of July, in the year one thousand eight hundred and fifty-four, and ending with the thirtieth day of June, in the year one thousand eight hundred and fifty-eight. Now, therefore, the said George Chorpenning, jr., contractor, and John C. Kingsley, George W. Crum, and James W. Smith, his sureties, do jointly and severally undertake, covenant, and agree with the United States, and do bind themselves—

1st. To carry said mail within the times fixed in the annexed schedule of departures and arrivals, except that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to what is given in the schedule; and so carry until said schedule is altered

by the authority of the Postmaster General of the United
19 States, as hereinafter provided, and then to carry according to said altered schedule. 2d. To carry said mail in a safe and secure manner, free from wet or other injury, under a sufficient oil-cloth or bear-skin if carried on horse, and in a boot under the driver's seat if carried in a coach, or other vehicle, and in preference to passengers, and to their entire exclusion if its weight and bulk require it. 3d. To take the mail and every part of it from, and deliver it and every part of it at, each post office on the route, or that may hereafter be established on the route, and into the post office at each end of the route, and into the post office at the place at which the carrier stops at night, if one is there kept; and if no office is there kept, to lock it up in some secure place at the risk of the contractor.

They also undertake, covenant, and agree with the United States, and do bind themselves jointly and severally, as aforesaid, to be answerable for the person to whom the said contractor shall commit the care and transportation of the mail, and accountable to the United States for any damages which may be sustained by the United States through his unfaithfulness or want of care; and that the said contractor will discharge any carrier of said mail whenever required to do so by the Postmaster General; also, that they will not transmit by themselves or their agent, or be concerned in transmitting, commercial intelligence more rapidly than by mail; and that they will not carry out of the mail letters or newspapers which should go by post; and further, the said contractor will convey, without additional charge, post office blanks, mail bags, and the special agents of the department on the exhibition of their credentials.

They further undertake, covenant, and agree with the United States, that the said contractor will collect quarterly, if required by the Postmaster General, of postmasters on said route, the balances due from them to the general post office, and faithfully render an account thereof to the Postmaster General in the settlement of quarterly accounts, and will pay over to the general post office all balances remaining in his hands.

For which services, when performed, the said George Chorpenning, jr., contractor, is to be paid by the said United States the sum of twelve thousand five hundred dollars a year, to wit, quarterly, in the months of May, August, November, and February, through
20 the postmasters on the route, or otherwise, at the option of the Postmaster General of the United States; said pay to be subject, however, to be reduced or discontinued by the Postmaster General, as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed, by the said contractor and his sureties, that the Postmaster General may alter the contract, and alter the schedule, he allowing a pro rata increase of compensation within the restrictions imposed by law for the additional services required, or for the increased speed, if the employment of additional stock or carriers ie rendered necessary; but the contractor may, in case of increased expedition, relinquish the contract on timely notice,

if he prefer it to the change; also, that the Postmaster General may discontinue or curtail the service, in whole or in part, in order to place on the route a greater degree of service, or whenever the public interests require such discontinuance or curtailment for any other cause, he allowing one month's extra pay on the amount of service dispensed with.

It is hereby also stipulated and agreed, by the said contractor and his sureties, that in all cases there is to be a forfeiture of the pay of a trip when the trip is not run, and of not more than three times the pay of the trip when the trip is not run and no sufficient excuse for the failure is furnished; a forfeiture of at least one-fourth part of it when the running is so far behind time as to lose connection with a depending mail; and a forfeiture of a due proportion of it when a grade of service is rendered inferior to the mode of conveyance above stipulated; and that these forfeitures may be increased into penalties of higher amount, according to the nature or frequency of the failure and the importance of the mail; also, that fines may be imposed upon the contractor, unless the delinquency be satisfactorily explained to the Postmaster General in due time, for failing to take from, or deliver at, a post office the mail, or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carrying it in a place or manner that exposes it to depredation, loss, or injury, by being wet, or otherwise; for intrusting the mail to a carrier under 16 years of age; for refusing, after demand, to convey a mail by any coach which the contractor regularly runs or is concerned in running on the route, beyond the number of trips above specified; or for not arriving
21 at the time set in the schedule. And for setting up or running an express to transmit letters or commercial intelligence in advance of the mail; or for transporting knowingly, or after being informed, any one engaged in transporting letters or mail matter in violation of the laws of the United States, a penalty may be exacted of the contractor equal to a quarter's pay; but in all other cases no fine shall exceed three times the price of the trip. And whenever it is satisfactorily shown that the contractor, his carrier or agent, has left or put aside the mail or any portion of it, for the accommodation of passengers, he shall forfeit not exceeding a quarter's pay.

And it is hereby further stipulated and agreed, by the said contractor and his sureties, that the Postmaster General may annul the contract for repeated failures; for violating the post office laws; for disobeying the instructions of the department; for refusing to discharge a carrier when required by the department; for assigning the contract without the consent of the Postmaster General; for setting up or running an express as aforesaid; or for transporting persons conveying mail matter out of the mail as aforesaid; or whenever a contractor shall become a postmaster, assistant postmaster, or member of Congress; and this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress, passed on the twenty-first pay of April, is the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

In witness whereof, the said Postmaster General has caused the

seal of the Post Office Department affixed, and has attested the same by his signature, and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names respectively.

JAMES CAMPBELL,
Postmaster General.

Signed, sealed, and delivered by the Postmaster General in the presence of—
GEORGE PETRIE.
Nov. 13th, 1864.

Sept. 26, 1864.		GEORGE CHORPENNING, JR.	[SEAL.]
	Oct. 11, 1854.	JOHN C. KINGSLEY.	[SEAL.]
22	Oct. 11, 1854.	GEORGE W. CRUM.	[SEAL.]
	Oct. 11, 1854.	JAMES W. SMITH.	[SEAL.]

And by the other parties hereto, in the presence of—
JOHN FURGUSON, Sept. 26, 1854.
W. MARTIN, Sept. 26, 1854.
B. B. STERNBURG, Oct. 11, 1854.
THOMAS SINGLETON, Oct. 11, 1854.
D. L. MCDONALD, Oct. 11, 1854.

I hereby certify that I am well acquainted with John C. Kingsley, George M. Crum, and James W. Smith, and the condition of their property; and that after full investigation and inquiry, I am well satisfied that they are good and sufficient sureties for the amount in the foregoing contract.

J. JORMAN,
Postmaster at Sacramento City.

The schedule of departures and arrivals.

Leave Salt Lake City on the 1st of each month.
Arrive at San Pedro by the 28th of the same month.
Leave San Pedro on the 1st of each month.
Arrive at Salt Lake City by the 28th of the same month.
November 13, 1854.

NOVEMBER 13, 1854.—Change, after passing San Bernardino, so as to run via Monte, San Gabriel, and Los Angelos, to San Pedro, omitting San Diego, 26 miles less, without change of pay, on condition that service be made once a fortnight, or oftener, on that part of the route via San Bernardino to San Pedro.

Exhibit "C."

Dr. Frank Chorpenning, being duly sworn, says, that during the time he was in the employ of the contractor on mail route No. 5,066, from Sacramento city, in California, to Salt Lake, in Utah Ter-
23 ritory, there were many attacks and depredations committed upon the various mail trains passing over said route, by the

several Indian tribes through which they were compelled to pass; that in the month of September, 1852, the Washoe Indians drove away from the train, while camped at Yruckee meadows, one horse and three mules; that the Humboldt river Indians took and killed four mules out of the trains in October and November, 1852; that in January, 1853, while a mail train was passing from California to Salt Lake, they were stampeded by the Indians, and three mules driven off, carrying with them one California riding saddle, and two pack saddles, with the fit-out, including blankets, provisions, &c.; that the train, going into California during the same month, and near the same place, on the Rio Virgin, had one mule shot and one driven away by the same Indians; that in the month of March following, they drove off from the train near Bitter Springs two mules, and killed one mule at Los Vegas out of the November train; that in the month of February, 1854, the train was attacked by a band of Indians at Cedar Grove, and one horse and two mules driven away; that the men in the employ of the contractor brought into the post in Carson valley one mule badly wounded by an arrow shot in August, 1851; that there were, beside the wounded one, seven head lost that month, and one man wounded in the left breast.

He further says, that in addition to the animals used on the road, there was always a band of horses and mules stationed at the post in Carson's valley, on the east side of the Sierra Nevada mountains, necessary for the use of said mail route, and that frequent incursions were made upon these animals by the Indians of that vicinity, the particular dates of which, he says, he is unable to give, but says he is satisfied there was killed and driven off from that post, in the various attacks, not less than twenty-three head of mules and horses, and that he thinks there was about twenty-eight or thirty head lost in all from this post.

He further says that he visited the spot, and picked up portions of the remains of A. Woodward, one of the contractors, who, with his four men, had been cut off by the Indians while in charge of the November train, in 1851; that there was lost with this train nine mules and one horse, with the entire outfit.

He also says, that in the spring of 1852, he passed by the remains of the wagon, animals, and mails that had been captured by
24 the Indians in Goose Creek kanyon in October previous, and that all the aforesaid animals, property, &c., belonged to the contractor, and were lost and destroyed while in actual service on said route.

He further says, that mails from Salt Lake to Independence, Missouri, and not belonging to the Salt Lake and California route, were, owing to the depth of the snow, and impassable condition of the Independence road during the months of December, 1852, January, February, March, and December, 1853, January, February, and March, 1854, thrown upon the contractor on route No. 5,066, to be by him carried to California, thereby subjecting him to heavy additional expense; that the increased weight of these extra or Independence mails was usually from five to ten hundred pounds, and some-

times requiring for their transportation a wagon; that he recollects on one occasion it required six additional mules to carry the eastern or Independence mails; that the mail, properly belonging to route No. 5,066, was generally carried on pack mules, and never exceeded one hundred and fifty pounds in weight.

He further says, that after the contractor had made repeated ineffectual attempts to cross the Sierra Nevada mountains in winter by the regular mail route between Sacramento and Salt Lake, and fully established the impracticability of said route, he proceeded, according to instructions, to carry the said mails by the south, or Spanish trail, going south to San Pedro and San Diego during the winter months, which increased the distance between Sacramento and Salt Lake about five hundred miles; that the mails carried by the southern trail were those for the months of March, 1852, January, February, March, November, and December, 1853, January, February, March, and April, 1854, and were, owing to the great increased distance, a heavy additional expense to the contractor.

He further says, that he was in the employ of said contractor when his contract was annulled and relet to W. L. Blanchard; that they were, at that time, and had, for eight or nine months previous, been performing the service according to contract on said route; that in view of the contract continuing till July, 1854, the contractor had in January, 1853, and before any notice of annulment reached him, made arrangements, engaged men, &c., to erect a fortified post on the head of Humboldt river, on said route, and that this improvement was not only necessary for the safe and speedy transmission of the mails, but would have been a source of very great profit to the contractor.

He further says, that during much of the time he himself had charge of much of the business of said contractor on route No. 5,066, and that from a thorough knowledge of his business he knows the said contractor to have lost thirty thousand dollars by the annulment of his contract in November, 1852.

He also says that he is acquainted with and has travelled at different times over mail route No. 5,066, and that the distance, as nearly as can be ascertained, is from Sacramento to Carson's valley, one hundred and eighty miles, and from Carson's valley to Salt Lake City, about seven hundred and thirty miles.

(Signed) FRANK CHORPENNING.

Sworn and subscribed before me this 27th day of May, A. D. 1856.

(Signed) R. P. CUMMINS, *J. P.*

STATE OF PENNSYLVANIA, *Somerset County:*

I, J. O. Kimmel, prothonotary of the court of common pleas of Somerset county, do hereby certify that R. P. Cummins, esq., whose name is subscribed to the foregoing certificate, is an acting justice of the peace in and for said county and State, duly elected and commissioned, and that full faith and credit is and ought to be given to all

such his official acts, and that the signature purporting to be his is genuine.

Witness my hand and seal of said court, 27th May, 1856.

(Signed) J. O. KIMMEL, *Prothonotary.*

Exhibit "D."

John M. Hockaday, being duly sworn, says that he is a resident of Salt Lake, in the Territory of Utah; that he has resided there in business during the past four years; that during the winter months, when the roads from there to the eastern or Atlantic States are blocked up with snow and impassable, the mails for said States have generally been sent via San Francisco, California, over Mr. Chorpenning's route; that in January, 1855, he passed over said route
26 to California, in company with the mail train, and that they carried at that time some eastern mail; that during the past winter almost the entire eastern or Independence (Mo.) mail was carried by said Chorpenning's route to California, and, as formerly, shipped thence to New York city; that he has, for some time past, superintended the fitting out of mail trains from Salt Lake, and knows the expenses of such trains, and the cost of transporting mails through that country, to be, at least, one hundred per cent. greater than they were for the same purposes previous to the month of August, 1854; that this additional expense has been brought about by and is the direct result of the war between the United States troops and the Indians on the plains, and that the war did not exist previous to said August, 1854; that when he left Salt Lake in March last depredations had been, and were then being, committed by the Indians along said mail route 12,801, from Salt Lake to California, and that eight white men had already been killed along said route, and some four hundred head of horses and cattle driven away. He further says, that owing to there being no government troops along nor near said route, from which the mail trains can get protection, the service must, should the present hostilities continue, become still more hazardous and expensive, and, without the addition of a largely increased force on the part of the contractor, may be entirely stopped.

(Signed) JOHN M. HOCKADAY.

Sworn and subscribed before me this 14th day of June, 1856.

(Signed) J. H. GODDARD, *J. P.*

Exhibit "E."

POST OFFICE, SALT LAKE CITY,
October 8, 1856.

MY DEAR SIR: I have been requested by the conductor on route 12,801, between this city and San Pedro, California, to make a statement in relation to the amount of mail matter transported on that route at this time, and the increase since the commencement of the present contract on the 1st of July, 1854.

Since the present contract between you and the department for

carrying the mails on that route was entered into there has been an increase of mail matter, and during the winter season especially much which should have been brought by the eastern mail has been forwarded by the isthmus, and transported to this Territory by way of San Pedro and San Bernardino, Cal., and no inconsiderable amount has been forwarded to the States that way in consequence of the failures of the contractors on route 8,911, to transport the mails regularly between this city and Independence, Mo., as per contract; and I have no hesitation in saying, from my knowledge of the matter, that more than twice the amount has been carried on that route than would have been if the eastern mail had been carried punctually at all seasons of the year since the present contracts were entered into. The punctuality that has been observed by the persons in your employ, in transporting the mails between this place and San Pedro, has inspired a confidence in the minds of the people, which has had a tendency above other considerations to increase the matter forwarded each way on said route 12,801, and should the mail continue to be carried punctually, as heretofore, I firmly believe there will be a further increase of mail matter on that route.

27

I am, sir, very respectfully, your ob't serv't,
(Signed) E. SMITH, *P. M.*

To GEORGE CHORPENNING, Esq.,
Mail Contractor, &c.

Exhibit "F."

STATE OF CALIFORNIA, *San Bernardino County:*

This is to certify that J. P. Carter and Leonard Conger, in the employment of George Chorpenning, contractor, on route No. 12,801, from San Pedro to Salt Lake, U. T., passed on their way into Salt Lake, U. T. on the 3rd day of February, 1856, having with them eight sacks of mail weighing about 90 pounds each, six of which were Independence mail, or from the Atlantic States, amounting to about 540 pounds. The above mail was carried on pack mules.

(Signed) D. M. THOMAS,
P. M. San Bernardino, Cal.

SEPT. 6*th*, 1856.

28 STATE OF CALIFORNIA, *San Bernardino County:*

This is to certify that Edward S. Hope and Sheldon Stoddard, in the employment of George Chorpenning, contractor, on route No. 12,801, from San Pedro to Salt Lake, U. T., passed this office on their way to Salt Lake, on the 4th day of March, 1856, having with them seven (7) sacks of mail, five of which were Independence or Atlantic mail, each sack weighing about 90 pounds, amounting to about 400 pounds. The conveyance was in a wagon.

(Signed) D. M. THOMAS,
P. M. San Bernardino, Cal.

To GEO. CHORPENNING, *Contractor.*
SEPT. 6*th*, 1856.

STATE OF CALIFORNIA, *San Bernardino County:*

This is to certify that J. P. Carter and John Palmer, in the employment of George Chorpenning, contractor, on route No. 12,801, from San Pedro, Cal., to Salt Lake, U. T., passed this office into Salt Lake, on the 3rd day of April, A. D. 1856, having with them 9 sacks of mail, seven of which were Independence or Atlantic mail, amounting to about 550 pounds. The conveyance was in a wagon.

(Signed) D. M. THOMAS,
P. M. San Bernardino, Cal.

SEPT. 6*th*, 1856.

STATE OF CALIFORNIA, *San Bernardino County:*

This is to certify that John Hunt and James Montague, in the employ of George Chorpenning, contractor, on route No. 12,801, from San Pedro to Salt Lake, U. T., passed this office on the 4th day of May, 1856, on the way to Salt Lake, having 6 sacks of mail, three of which were Independence or Atlantic mail, weighing about 90 pounds per sack, amounting to about 275 pounds. Conveyance, pack mules.

(Signed) D. M. THOMAS,
P. M. San Bernardino, Cal.

SEPT. 6, 1856.

STATE OF CALIFORNIA, *San Bernardino County:*

This is to certify that John Hunt and Charles E. Baker, in employment of George Chorpenning, contractor, on route No. 12,801,
29 from San Pedro to Salt Lake, U. T., passed this office on the 5th day of July, 1856, on their way to Salt Lake, having six sacks mail, two of which was Independence or Atlantic mail, weighing total about 175 pounds. Conveyance on mules.

(Signed) D. M. THOMAS,
P. M. San Bernardino, Cal.

SEPT. 6*th*, 1856.

STATE OF CALIFORNIA, *San Bernardino County:*

This is to certify, that J. P. Carter and Robert Rollins, in the employment of George Chorpenning, contractor, on route No. 12,801, from San Pedro, to Salt Lake, U. T., passed this office on the 9th day of August, A. D., 1856, on the way into Salt Lake, having nine sacks of mail, weighing about 75 pounds each, about four of which were Independence or Atlantic mail. Conveyance was by a wagon.

(Signed) D. M. THOMAS,
P. M. San Bernardino, Cal.

SEPT. 6*th*, 1856.

Exhibit "G."

DISTRICT OF COLUMBIA, *County of Washington:*

Before me, B. K. Morsell, an acting justice of the peace in and for the county and district aforesaid, personally appearnd James B. Leach, who makes oath that he is a resident of the State of Califor-

nia, and has resided in that country for the past five years; that during upwards of two years he has been engaged by the contractor, George Chorpenning, jr., in superintending the transportation of the mails on route No. 12,801, from Salt Lake City, in the Territory of Utah, to San Pedro, in the State of California. Witness further states, that about the 20th day of June, 1855, and while he was on his way in charge of the mail train from Salt Lake to San Pedro, he was attacked by the Indians, in the night, near Kingston springs, and had one horse and one mule shot by them; that these two animals were worth about five hundred dollars; that none but animals of the best quality are used in said service. Witness further
30 states, that in the month of July, 1855, there was between seven and eight hundred pounds of eastern mail matter, or mail belonging to the Independence (Mo.) and Salt Lake route, thrown upon and carried by the contractor over route 12,801, from California to Salt Lake; and that since that time there is generally, every trip, from five to nine hundred pounds of this Independence mail carried by the contractor over route 12,801; that the said eastern or Independence mail does not belong to the route in question, and its transportation could not have been anticipated by the contractor when he bid for his route in April, 1854; and that the Salt Lake and California mail properly belonging to that route never weighed over seventy-five to one hundred and fifty pounds per trip, and was carried on pack animals, except when the weight of the Independence mails required a wagon, which was often the case. Witness further says, that, owing to the extra eastern mails, and the repeated outbreaks and difficulties with the Indians on the plains since August, 1854, the transportation of the mails on route No. 12,801 is attended with a very largely increased expense.

(Signed) JAMES B. LEACH.

Sworn and subscribed before me this 22d day of December, 1856.

(Signed) B. K. MORSELL, *J. P.*

Exhibit "H."

DISTRICT OF COLUMBIA, *County of Washington:*

Before me, J. H. Goddard, an acting justice of the peace in and for the county and district aforesaid, personally appeared Charles A. Kinkead, and makes oath, that for the last five years he has resided in Great Salt Lake City, doing business as one of the firm of Livingston, Kinkead & Co; that he has frequently crossed the plains with the mail trains and with his own outfit, both to the eastern States and to California. Being requested to state what constituted an outfit for such a trip, he replies, that for each man is required at least two mules, (witness himself has never travelled with less than three,) saddle, bridle, and Spanish spurs, packsaddle and blankets, lariette, and not less than one pair of good Mackinaw blankets, one pair of alforgasses, a good fowling-piece, and a pair of Colt's navy
31 or dragoon revolvers, knife, belt, pistol-holsters, hatchet, cooking utensils, one pound of meat and a pound of bread per day,

(usually taking the bone out of the meat,) with a few pounds of tea, coffee, sugar, and dried fruit, whiskey ad libitum, (men consume more on the plains than anywhere else.) Witness further states that he is well acquainted with the value of the articles above enumerated. California saddles, none others being used, were worth not less than sixty dollars each, packsaddles and covers, with the lash-ropes, sinches, etc., are worth not less than twenty dollars; Mackinaw blankets, eighteen dollars per pair; saddle-blankets of good quality, not less than eight dollars a pair—one pair being required for each mule. Alforgasses are very large leather saddle-bags, worth at least twenty dollars each; guns, according to quality, from forty to a hundred dollars; Colt's pistols, at Great Salt Lake, from fifty to seventy-five dollars each. (They are somewhat cheaper now.) I have known as much as $150 given for one pistol in the year 1852. The lariette rope is worth from forty to sixty cents per pound, each one weighing four or five pounds. Picket pins, of iron, are worth $1,50; cooking utensils not less than $6; coffee, forty cents per pound; tea, two dollars; bacon, forty cents per pound. Bread is cheap, say six dollars per hundred pounds for flour. The fair average price of Spanish spurs is twelve dollars. I have never known them sell for less than eight; have often seen them sell for twenty. No other spurs are used on the plains. Knife-belt and pistol-holsters are worth at least ten dollars. They generally cost more. Witness went with the mail train to California last February, travelling mostly in the night to avoid the Indians. The mail consisted of five large sacks, most of which was the eastern mail properly belonging to the Independence route. We met the train from California with about fourteen sacks of mail, most of which must have been from the Atlantic States. The California mail proper for Salt Lake never consists of more than two or three sacks. I never knew them to be more except when the eastern mail came with it. Witness, on his arrival at California, also saw at San Bernardino and Los Angelos, seventeen sacks of mail which had already accumulated to go out with the March train. The steamer which arrived at San Pedro from San Francisco, two days after the mail train had left for Salt Lake, brought additional mails for the same place. Livingston, Kinkead & Co. last winter sent their eastern correspondence by the California mails; they have
32 done the same since 1851, whenever the mountains were covered with. The agents of Mr. Chorpenning, in California, were compelled to purchase a wagon of Edward Hope to carry the March mail above spoken of; they had usually carried their own, or the California and Salt Lake mail proper, on two or three pack-mules.

(Signed) CHARLES A. KINKEAD.

Sworn and subscribed before me this 5th day of July, 1856.

(Signed) J. H. GODDARD, *J. P.*

Exhibit "I."

POST OFFICE, SACRAMENTO CITY, CAL.,
17*th February*, 1855.

I hereby certify, that George Chorpenning received and delivered the United States mail from Sacramento city to Carson valley, from the 1st of December, 1853, to 31st March, 1854. Also received a mail from this office on the 21st August, 1854, for Carson valley and Salt Lake.

(Signed) F. FORMAN, *P. M.*

P. O. CARSON VALLEY, *Dec.* 17, 1853.

I hereby certify, that the mail from Sacramento city was delivered at this office by the bearer, Mr. Dritt, on the 17th instant, in a safe and secure manner, free from wet or other injury, and that it was also taken away from this office by said carrier for Sacramento, on the 23d day of December. Also, said carrier delivered the mail from said city at this office on the 28th January, 1854, in like good order, and that it was also taken by him from this office for Sacramento, on the first of February, 1854.

(Signed) J. C. FAIN, *P. M.*

P. O. CARSON'S VALLEY, 1854.

I hereby certify, that the mail from Sacramento city was delivered at this office by the bearer, Mr. Dritt, on the 17th day of February, in a safe and a secure manner, free from wet or other injury, and that it was also taken away from this office by the said carrier for Sacramento, on the 24th day of February.

33

(Signed) J. C. FAIN, *P. M.*

P. O. CARSON'S VALLEY, U. T.,
April 1*st*, 1854.

I hereby certify, that the mail from Saoramento city was delivered at this office by the bearer, Mr. Dritt, on the 26th day of March, in a safe and secure manner, free from wet or other injury, and that it was also taken away from this office by said carrier for Sacramento city, on the 1st day of April.

(Signed) J. C. FAIN, *P. M.*

CARSON'S VALLEY, *August* 26*th*, 1854.

This is to certify, that I have this day received from George Chorpenning, the United States mail from Sacramento city in good order.

(Signed) J. C. FAIN,
Per P. A. KINSEY, *Dep.*

Exhibit "K."

To the Senate and House of Representatives in Congress assembled:

The petition of George Chorpenning, jr., respectfully represents, that on the 1st day of May, 1851, your petitioner and Absalom Woodward, under the firm of Woodward & Chorpenning, entered into a contract with the Post Office Department of the United States to carry the mail from Sacramento city, in California, to Salt Lake City, in Utah Territory; the mail to be carried monthly each way, at an annual compensation of fourteen thousand dollars.

The bid was a "star bid," and the route designated was numbered 5,066, and ran from Sacramento city via Carson's valley, and Humboldt's or St. Mary's river, near the Oregon line to Salt Lake.

The route was established by the act of Congress of the 27th of September, 1850, which established a mail route from Fort
34 Bridger, by Salt Lake City, to San Francisco. The country between these points was at this time almost wholly unknown and unexplored, and inhabited only by wandering bands of savages who were entirely ignorant of our government, and who looked on all persons passing through the country as intruders who were their rightful prey. The ignorance of the character and practicability of the routes over which a mail might be carried, prevented the designation in the law of any points between San Francisco and Salt Lake, and left the department to adopt any route between those points that might be found practicable. The second section of this law extended to Utah and New Mexico the third section of the act of the 14th of August, 1848. By the said third section, among other things, the Postmaster General was authorized to make such temporary arrangements in California as the public interests might require, and was authorized to employ two agents in making temporary arrangements for the establishment of post offices and transmission, receipt, and conveyance of letters in Oregon and California.

The grant of these unusual powers in California and Utah, shows that Congress foresaw that the arrangement of the mails would require an extent of discretion not confided to the department in the older and settled parts of the country. The route No. 5,066, over which Woodward and your petitioner contracted to carry the mail, was near one thousand miles long, chiefly through a country traversed by rugged mountains and rough and rapid streams, without road or bridges, and in the winter and spring seasons rendered difficult and sometimes impracticable of passage by the heavy falls of snow and the swollen condition of the waters. The two principal ranges of mountains to be traversed were the Sierra Nevada and the Goose Creek range, and these chains of mountains from their ruggedness, the heavy falls of snow, and the extreme rigors of the winter cutting off the means of subsistence, more resemble the Alps and the Himmalaya mountains than the mountains between the Atlantic and the Mississippi country. This route presented great and untried natural

difficulties, which were aggravated by the hostilities of the Indians scattered over the country. No military post of the United States has been established on or near this route, and during the contract no military party ever passed over it. No check existed to the hostilities of the Indians except the strength of the party travelling
35 through the country. Your petitioner and his partner being the first persons who engaged to make regular and periodical trips over these mountains, were the first to encounter these difficulties; but, notwithstanding these difficulties, some advantages were supposed to exist which would enable the contractors to render the route profitable. It was along this route that the main body of emigrants passed from the States to California. The emigrants passed from July to October. Much of their stock was exhausted by the time it reached Salt Lake, and was there sold, and the emigrants then became passengers in the mail train to Sacramento. Others passed Salt Lake, and their stock being worn out and exhausted, would be lost or sold at reduced prices. The contractors designed establishing two posts; one at Carson's valley, the other on the Humboldt or St. Mary's river.

These posts were designed to be fortified, so as to afford sufficient defence against the Indians; to be places of deposit for stores, recruiting stock, etc.; and places of rest for emigrants, with whom a profitable trade in worn-down and exhausted animals might be carried out. They established the post in Carson's valley in 1851, when it was a wilderness. This post was the nucleus of the now flourishing settlement in that valley. The post on Humboldt's river was never established, for reasons hereafter mentioned.

The contractors commenced carrying the mail in the month of May, 1851. As has been said, it was the first effort ever made to travel regularly and at stated times and all seasons of the year through this route. A statement of some of the difficulties encountered will illustrate the character of this service, and your petitioner refers, for the purpose of sustaining this statement, to the accompanying affidavits, and the returns and documents filed in the Post Office Department. The first mail left Sacramento city on the 1st of May, 1851. The distance to Carson's valley was one hundred and seventy miles, and such were the obstacles encountered that it required twenty-two days to reach the valley. Sixteen days and nights were spent in the Sierra Nevada mountains, and during that time the party could not find sufficient space of bare ground to camp upon.

The mail ran through the summer months over this route, and was frequently attacked by the Indians, who stole mules, horses, and other property; sometimes wounding and killing the men who had charge of the mail.

36 The October mail from Sacramento left with forty-two animals in the train. On the first night out from the settlement, the Indians stole two horses and one mule; between that and its arrival at Carson's valley, the train was attacked three times, and nine mules and one horse stolen. One mule was recovered, but so

badly wounded as to be unfit for service. The train went one hundred and sixty miles further, when it was attacked by the Indians and compelled to return to Carson valley.

The October train from Salt Lake started on the first of the month, and was attacked, the wagons destroyed, part of the animals were killed, and the mails taken by the [the] Indians at the cañon on Goose creek. The men escaped and made their way to the post in Carson's valley. The contractors, believing that the hostility of the Indians rendered it unsafe to travel the route longer without a military escort, applied to Gen. Hitchcock, then commanding in California, for an escort, which he was unable to give, and they were compelled to proceed in the execution of their contract without it.

In November, 1851, the train started from Sacramento under the charge of Mr. Woodward, with four men. This train reached Willow springs, near Humboldt's river, when it met the November train from Salt Lake City. Woodward wrote back to your petitioner that he had encountered several hundred Indians, and beaten them from the road. He then travelled seventy-two miles in one day to the place at which he met the other train. The trains parted on the roads to their respective destinations. After that, nothing was heard from him; he, with his entire party, was murdered by the Indians, the animals destroyed, and the mails lost.

His remains have since been found.

The mail which left Salt Lake in November, 1851, reached Carson's valley late in the month, and the conductors knowing the usual route across the mountains to be then impassable on account of the snow, went up to the crossing of Feather river, an increased distance of 175 miles, crossed the mountains on snow-shoes, and reached Sacramento with the mails in thirty-nine days after they left Carson's valley. Your petitioner, being convinced that the mail could not be carried on that route, applied to Mr. James Goggen,
37 special agent at California, for permission to carry the mail to San Francisco; thence by the Pacific ocean to San Pedro, in the southern part of California, and thence by land to Salt Lake. Mr. Goggen advised that, before this was done, other efforts should be made to carry the mail on this route. The December mail was, therefor, sent from Sacramento, but, finding the Sierra Nevada impassable, it returned to Sacramento. The January mail was also sent out and returned. By this time, the most painful apprehensions for the fate of Woodward were excited, and your petitioner, still being in hope that he might be alive, determined to send out a party to penetrate through the mountain route, and search for Woodward and carry the mail with them.

He started the February mail from Sacramento under the care o. Edson Cady, by the Feather river route. Cady and one companion crossed the mountains on snow-shoes, and reached Carson's valley on foot. Thence Cady started with four men and eight animals belonging to the contractors, and two belonging to the men, and proceeded towards Salt Lake. On the Goose Creek mountains all their animals froze to death, and the men proceeded on foot with the

mail on their backs, lived seven days on mule meat, and were four days without food. They reached Salt Lake on the 25th of March. The March mail was, with the assent of Mr. Goggen, sent round by San Pedro.

Your petitioner, not having heard of the fate of Woodward, started the April mail from Sacramento by Feather river. The [the] men in charge passed the mountain on snow-shoes, and travelled on foot to Carson's valley. In the latter part of April your petitioner started with the mail for May from Sacramento, and after sixteen days laborious travelling through a new route, which was less obstructed by snow than the former route, reached Carson's valley. One day after his arrival the mail party, which left Sacramento on the 1st of April, arrived. The party had been in the mountains forty-seven days. With the two mails he proceeded to Salt Lake, where he arrived on the 13th of June. By the death of Woodward, the loss of stock, and the disasters incurred, the concern was wholly insolvent. Your petitioner could procure neither men nor animals at Salt Lake, and he returned alone with two animals, carrying the July mail. The eastern mails from Sacramento were regularly sent out, and the mails both eastward and westward were carried regularly, with as much certainty during the summer months as the condition of the country permitted.

38 Your petitioner availed himself of his other resources to execute the contract in future; but having demonstrated the impracticability of carrying the mail from November to June on this route, he, on the 17th of August, again applied to Mr. Goggen, the special agent for California, and through him to the department, for an alteration of the schedule, which would enable him to carry the mail on the southern route in the winter months. He also commenced his preparations to build a post on Humboldt's river in 1853.

The advantages of the alteration of the schedule, so as to permit him to carry the mail on the southern route, were these: On the northern route there was no post office between Salt Lake and Sacramento until 1852, when one was established for the settlement which gathered around the post in Carson's valley. On the southern route a mail would be supplied to "Los Angelos" and "San Bernardino," two southern counties of California, which were without a mail, to Parrovan, Cedar Creek, Fillmore City, and several others, all flourishing settlements, which were without a mail. The Indians on the southern route were not, at that time, infected with the hostile feeling of the northern tribes. The change was approved by Mr. Goggen, under the special and enlarged powers vested in him, and by him was recommended to the department.

Your petitioner continued to carry the mail in the summer and fall months on the northern route, notwithstanding the heavy losses he sustained from Indian depredations, and the total want of protection by the government; and in the winter months carried it by the southern route.

On the 19th of November, 1852, the Postmaster General ordered

the contract of your petitioner to be annulled, as he alleged, for repeated failures to perform the service agreeably to contract, and relet the same, without advertising, at fifty thousand dollars to other contractors, being an advance of $36,000 on the same service. This was done without any intimation whatever to your petitioner; without affording him an opportunity to be heard; and, as he presumes, without any other enquiry into the service than such as satisfied the Postmaster General that the compensation paid your petitioner was inadequate.

Your petitioner received notice of this annulment on the
39 31st of January, 1853, and feeling that the order was grossly unjust to him, he determined to ask indemnity from the department. He did so, and, after a full hearing, the Postmaster General, on the 22d of April, 1853, decided that the alleged cause of annulling the contract was not of a character to justify the decision; and being satisfied that due exertion had been made to perform the contract, rescinding the order annulling it, and directed your petitioner to resume the service. But your petitioner states that, upon the receipt of the order annulling the service, he had to abandon his preparations for building a post on Humboldt's river, and before he could have communicated the order of the 22d of April to his agents in California, and resumed his preparations, the season of 1853 would have been so far advanced as to render any building he might have erected useless for that year; and, as his contract terminated on the 1st of July, 1854, it could not be of service before the expiration of the contract. He thus entirely lost all his expenditures in preparation for this post. He was not paid for the four months while the order existed, and had to keep his hands on wages and his stock unemployed during that time He also had, in the manner above shown, lost all the benefit of his contract for the summer of 1852. By the order of the 19th of November, 1852, and the consequent derangement of his business, he had lost much, if not all, of the benefit to be derived from the operations of the summer of 1853. He therefore was unwilling to resume the service for the residue of the contract for a price less than $30,000 per annum, and so stated to the department. The Postmaster General did not think he had the power to make him this allowance, but promised that your petitioner should be indemnified by the government. Your petitioner proceeded to execute the contract with this understanding; he carried the mail on the northern route during the season of the year it was practicable to do so, and in the winter months he carried it, with the consent of the agent, by the southern route, and this change was sanctioned by an order of the department dated the 14th of December, 1853. At this time it became necessary to supply the settlement at Carson's valley, at which a post office had been established on the northern route. This duty your petitioner performed by sending carriers, who crossed the Sierra Nevada mountains on snow-shoes, and thus carried the mail to that post office through the winter months.

Your petitioner represents that, by the 316th regulation of
40 the Post Office Department, which regulation is based upon the 23d section of the act of Congress of the 2d of July, 1836, the Postmaster General is authorized to alter the contract and to alter the schedule, he allowing a pro rata compensation within the limits of said act for additional service. The change required five hundred and fifty miles of steamboat transportation in addition to the old route, and supplied many post offices in the southern part of California and Utah, which could not otherwise have been supplied. On the old route there was only one post office east of the Sierra Nevada mountains, that of Carson's valley, which was supplied as has been above stated.

The Post Office Department having become convinced of the impracticability of carrying the mail on route 5,006, and the propriety of changing to the route over which your petitioner carried it in the winter months, advertised for proposals for carrying it on that route, designated as route 12,801, service to commence 1st July, 1854. Your petitioner put in a "star bid," and became the contractor at $12,500 per annum. At the time this contract was taken the Indians on the southern route were comparatively peaceable. Your petitioner, in all the estimates he made for the execution of the contract, made them on the hypothesis that peace would be preserved by the United States. This was his belief, founded on his confidence that due protection would be extended by the government to the recent and growing settlements in the southern parts of Utah and California, and to the intercourse and trade which were daily increasing in that region, and also on the belief that where the legislative department had authorized a contract for carrying the mail, and that contract had been entered into by the proper department, government, by necessary implication, contracted to afford to that mail, in its transit through its Territories, adequate protection from the common enemy of the country.

Your petitioner could not suppose, when he entered into a contract to carry the mail of the United States, that he was taking a contract to maintain and carry on an Indian war. The considerations were enforced by the fact that the Indians on route 12,801 were of tribes or nations different from those on route 5,066 in several respects. The most striking difference was, that the northern
Indians had, from their intercourse with the whites, learned
41 the use of fire-arms, and were supplied with arms and ammunition. The southern Indians knew little or nothing of the use of fire-arms, and were supposed not to partake of the fierce war spirit of the northern Indians.

Your petitioner firmly believes he could execute the contract 12,801 in security and peace, and that with the profits derived from passengers, and the incidental advantages of trade, he could render the route profitable and repair the disastrous losses sustained on route 5,066. But in these expectations your petitioner has been disappointed. The government has taken no steps to keep the peace, or cause its power to be felt by these Indians. In the whole country between

the Rocky mountains and the Sierra Nevada range there is not one fort nor a body of troops. There is no agent among the Indians on this route—no treaty of peace has been made with them. They have in no respect been subjected to the government of the United States, but are left in the same condition of lawless independence in which they were before the acquisition by the United States. When the war with the tribes east of the Rocky mountains broke out in the month of August, 1854, the spirit extended to the tribes through which your petitioner's mail train must pass. This was evinced by the fact that the mail party of your petitioner was attacked in August, 1854, by a strong party of Indians, a portion of the mail taken, one man seriously wounded, and several animals killed. Since then the hostile spirit of these people has seemed to increase. They are rapidly learning the use of fire-arms, and are becoming supplied with them. This spirit has so far advanced that the Indians in San Bernardino county, California, are now in a state of insurrection along the mail route. One party engaged in surveying the public lands, under the authority of the United States, has been cut off, and two parties raised in California to pursue these Indians have been repelled; and similar outbreaks have occurred recently on the other end of the route, near Salt Lake.

Since August, 1854, immediately after he commenced executing the contract on route 12,801, your petitioner has been compelled to keep up a strong, well-armed, and mounted escort, to protect the mail carried by him. This escort has increased the expenses of the route more than one hundred per cent., and his mail pay has not paid more than fifty per cent. of his necessary expenses. The anticipated profit from passengers, and the collateral advantages of trade, have been destroyed. Another source of loss, not anticipated, has occurred from the inability of the contractors from Salt Lake, eastward to Independence, Mo., to carry the mail on that route in the winter months. To facilitate the public and private business the postmaster at Salt Lake, during most of the winter months, sends the eastern mail, which, by the usual course of business and by law, would pass from Salt Lake to Independence on the southern route, to San Francisco, and from thence it is carried round the isthmus to the eastern offices. By this arrangement your petitioner is in fact, for several months in the year, performing the contract service of the eastern contractors, and this is done at a great loss to him. He is compelled to provide and support additional carriages, animals, and armed escorts. His bid being a "star bid," he can, when there is danger, pack the mail on horseback, and by selecting his hours of travel and shunning dangerous routes, often carry the mail in greater security and at less expense; and the small size of the California mail, which usually belongs to his route, will enable him to do this; but the eastern mail, which usually weighs one thousand pounds, and when this is added to his own mail, it renders such an arrangement impossible. He is compelled to carry it in wagons on routes practicable for wagons, at a greatly increased expense and a much greater exposure to depredations.

Your petitioner is advised that for his losses of property in the service of the government, the increased service required of him, and losses sustained by the unjust annulment of his contract on route 5,066, and for his pay for the time of said annulment, and for the increased cost of transportation rendered necessary by the state of war unexpectedly arising among the Indian tribes through which the mail was carried by his contract on route 12,801, he has a claim on the justice of the nation, which he submits for your consideration, and asks such relief as in your wisdom you may devise.

Respectfully submitted:

(Signed) GEORGE CHORPENNING, JR.

WASHINGTON, D. C., *June*, 1856.

43 In the Court of Claims, December term, 1866.

THE UNITED STATES *ats.* GEORGE CHORPENNING. } No. 2,226.

And the said defendants, by John J. Weed, their solicitor, come and make answer to the petition of the claimants on file herein; and not confessing the same, or any part thereof, doth hereby most expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States are indebted to said claimant in the sum of one hundred and seventy-six thousand five hundred and seventy-six dollars and thirty-seven cents, the defendants say that they are not indebted to said claimant in said sum of money nor any part thereof.

JOHN J. WEED,
Assistant Solicitor for the United States.

44 In the Court of Claims.

GEORGE CHORPENNING *vs.* THE UNITED STATES. } No. 2,226.

And now, to wit, April 20th, A. D. 1868, the court, upon due consideration of the premises, do find in favor of the defendant, and do order, adjudge, and decree that the claimant take nothing by his suit and that the petition be dismissed.

BY THE COURT.

45 In the Court of Claims.

GEORGE CHORPENNING *vs.* THE UNITED STATES. } No. 2,226.

And now comes the said claimant, by his solicitors, Hughes, Denver & Peck, and prays that an appeal in said cause be allowed to the

Supreme Court of the United States, according to the rules of the court and the acts of Congress in that case made and provided.

HUGHES, DENVER & PECK,
Solicitors for Claimant.

46 At a Court of Claims held at the Capitol in the city of Washington, on Monday, June 15, A. D. 1868.

GEORGE CHORPENNING
vs.
THE UNITED STATES. } No. 2,226.

Ordered, That the petition for appeal, filed in this case by the solicitors for the claimant, be granted, and that the appeal be allowed.

BY THE COURT.

47 Court of Claims.

GEORGE CHORPENNING
v.
THE UNITED STATES. } No. 2,226.

On the pleadings and evidence herein the Court of Claims makes and determines the following—

Findings of fact.

1. On the 25th day of May, 1857, the Postmaster General of the United States, acting by virtue of and under the first section of the "Act for the relief of George Chorpenning, jun.," approved 3d March, 1857, adjusted and settled the said claimant's claim referred to in such section, at the snm of $49,482, which sum the claimant accepted and received from the defendants.

And on the 30th day of October, 1857, the same Postmaster
48 General corrected & added to the foregoing settlement by allowing upon the said claim the further sum of $29,590 95, which further sum the claimant also received and accepted from the defendants.

2. The "affidavits and proofs" referred to in the said first section of the private act for the relief of George Chorpenning, jun., as "on file in the House of Representatives," do not contain any specific statement or account of the items of services referred to by such section, but consist of a great number of ex parte affidavits & other testimony, showing various facts & circumstances connected with the said claim, but leaving the amount of each item unsettled and undetermined, and requiring the ultimate facts of each to be deduced therefrom as from ordinary evidence.

49 And on the said findings of fact the Court of Claims makes & determines the following—

Conclusion of law.

Under the first section of the private act for the relief of George Chorpenning, jun., approved the 3d March, 1857, the Postmaster General of the United States had the exclusive jurisdiction & authority to settle & adjust the claim therein referred to, and his decision & award thereon, followed by the acceptance of the sum awarded by the claimant, was final & conclusive upon the claimant, and the Court of Claims has no authority or jurisdiction to hear or determine the said claim, or to correct or change the award of the Postmaster General.

In the Court of Claims.

GEORGE CHORPENNING
vs.
THE UNITED STATES. } No. 2,226.

I, John Randolph, ass't clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the solicitors of the claimant for the allowance of an appeal, as filed in the clerk's office on the 15th of June, A. D. 1868, and of the order of the court allowing the same; of the special finding of the facts by a majority of the court, and the conclusions of law on its said facts on which the court finds its judgment.

In testimony whereof, I have hereto set my hand, and affixed the seal of said court, at Washington, this 10th day of December, A. D. 1868.

[SEAL.]

JNO. RANDOLPH,
Ass't Cl'k C't of Claims.

O

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

GEORGE CHORPENNING, *Appellant*,
vs.
THE UNITED STATES. } No. 9.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

GEORGE CHORPENNING, *Appellant*,
vs.
THE UNITED STATES. } No. 9.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This was a petition, filed in the Court of Claims, to recover the sum of $176,576 37, alleged to be due the appellant for services in carrying the mail in California, between the years 1851 and 1854, and payable to him, as he alleged, by virtue of the act of March 3, 1857, (14 Stats. at Large, 521,) which enacted:

"That the Postmaster General be, and he hereby is, required to adjust and settle the claim of said Chorpenning, as surviving partner of Woodward and Chorpenning, and, in his own right, for carrying the mails by San Pedro, and for supplying the post office in Carson's Valley, and also for carrying part of the Independence mail by California; allowing a *pro rata* increase of compensation for the distance by San Pedro, for the service to Carson's

Valley, and for such part of the eastern mail as was carried by California, during all the time when said services were performed, as shown by the affidavits and proofs on file in the House of Representatives.

"SEC. 2. *And be it further enacted*, That the Postmaster General be, and he hereby is, required to adjust and settle the claim of said Chorpenning, as surviving partner of Woodward and Chorpenning, for damages on account of the annulment or suspension of Woodward and Chorpenning's contract for carrying the United States mail from Sacramento, in California, to Salt Lake City, in Utah Territory, as shown in the affidavits and proofs on file in the House of Representatives.

"SEC. [3] 4. *And be it further enacted*, That the Postmaster General be required to allow and pay to said Chorpenning his full contract pay, during the suspension of Woodward and Chorpenning's contract, from the fifteenth day of March, eighteen hundred and fifty-three, to the first day of July, of the same year; and, also, to allow and pay to said Chorpenning, thirty thousand dollars per annum from the first day of July, eighteen hundred and fifty-three, when he resumed service under the contract of Woodward and Chorpenning, down to the termination of his present contract, which said sum of thirty thousand dollars per annum shall be in lieu of the contract pay under both contracts, and the sums in this act authorized to be allowed shall be paid out of the Treasury."

Mr. Aaron V. Brown, Postmaster General, in settling

the appellant's claim under this act of Congress, did not, in reckoning the *pro rata* increase of compensation referred to in the first section, allow the appellant at the rate of $30,000, as provided in the third section, but at the rate of compensation fixed by the original contracts between the Government and him; and it is for the difference between the amount which would be due the appellant, according as the compensation is based upon the original contract prices and the prices fixed by the third section of the act, that suit is now brought against the Government.

The Court of Claims findings are as follows:

"1. On the 25th day of May, 1857, the Postmaster General of the United States, acting by virtue of and under the first section of the 'Act for the relief of George Chorpenning, jr.,' approved 3d March, 1857, adjusted and settled the said claimant's claim referred to in such section, at the sum of $48,482, which sum the claimant accepted and received from the defendants.

"And on the 30th day of October, 1857, the same Postmaster General corrected and added to the foregoing settlement, by allowing upon the said claim the further sum of $29,590 95, which further sum the claimant also received and accepted from the defendants.

"2. The 'affidavits and proofs' referred to in the said first section of the private act for the relief of George Chorpenning, jr., as 'on file in the House of Representatives,' do not contain any specific statement or account of the items of services referred to by such section, but consist of a great number of *ex parte* affidavits and other testimony, showing various facts and circumstances connected with the said claim, but leaving the amount of each item unsettled and undetermined, and requiring the ultimate facts of each to be deduced therefrom as from ordinary evidence."

Its conclusion of law, from these facts, is as follows:

"Under the first section of the private act for the relief of George Chorpenning, jr., approved the 3d March, 1857, the Postmaster General of the United States had the exclusive jurisdiction and authority to settle and adjust the claim therein referred to, and his decision and award thereon, followed by the acceptance of the sum awarded by the claimant, was final and conclusive upon the claimant, and the Court of Claims has no authority or jurisdiction to hear or determine the said claim, or to correct or change the award of the Postmaster General."

ARGUMENT.

I.

The Court of Claims was established by the act of February 24, 1855, with powers to hear all claims "founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States."

10 Stats. at Large, 612.

As originally established, it was only created to assist Congress in the investigation of claims, and had no power of rendering judgments against the Government. Congress may, too, at any time, withdraw any case or class of cases from the jurisdiction of the Court of Claims and settle them itself, or in any other manner that it sees fit to prescribe.

When, therefore, Congress, in 1857, with the Court of Claims in full operation under the original act, and,

so far as its jurisdiction to hear cases went, with powers as wide as those now possessed by it, passed the act referring Chorpenning's claim to the Postmaster General, and thereby provided the manner in which it should be settled, it took the case out of the jurisdiction of the Court of Claims under the act of 1855, and, consequently, this claim, as founded upon the act of 1857, is not one founded upon "any law of Congress," within the meaning of the act of 1855.

De Groot *vs.* The United States, 5 Wallace, 432.

United States *vs.* Adams, 7 Wallace, 481, 482.

In this view of the case, it is immaterial whether the Postmaster General construed the act of 1857 correctly or not. If he erred, and the appellant has suffered from his error, his remedy is by petition to Congress.

II.

But, without reference to this question of jurisdiction, the Court of Claims rightly decided that it had no jurisdiction of this case. So far as that court is concerned, the decision and findings of the Postmaster General are conclusive. The case was referred to him as assessor, and, although his decision may have been erroneous, his award cannot be reopened or his errors corrected by any one except by Congress. Without the act of 1857 there would have been no case upon which to found the suit in the Court of Claims, because the amount sought to be recovered on this petition is the extra compensation alleged to have been given by Congress, and not

compensation founded on any contract. And the act of Congress which gave this extra compensation (and which must be considered as a gratuity rather than a claim resting upon contract) named the Postmaster General as the tribunal by which the amount given by the statute was to be determined, and the peculiar character of the allowance thus made, and of the duties thus imposed upon the Postmaster General, either made him an arbitrator between the parties, whose decision was to be final, or else an assessor to aid Congress in settling the sum to which the appellant was entitled, from whom appeal only lies to Congress itself.

III.

The acceptance of the money allowed by the Postmaster General estops the appellant to sue for any additional sum alleged to be due under the act of Congress submitting the case to that officer.

United States *vs.* Adams, 7 Wallace, 463, and 9 *Ibid.*, 554.

United States *vs.* Child, December term, 1870.

B. H. BRISTOW,
Solicitor General.

C. H. HILL,
Assistant Attorney General.